

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 25 (First Edition)

SHORT TITLE: Amend Felony Breaking or Entering.

SPONSOR(S): Representative T. Moore

FISCAL IMPACT

(\$ in millions)

Yes No No Estimate Available

	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
State Impact					
General Fund Revenues:					
General Fund Expenditures:					
State Positions:					
NET STATE IMPACT	Likely budget cost. See Assumptions & Methodology section for additional details.				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:

Administrative Office of the Courts, Department of Public Safety, Office of Indigent Defense Services

EFFECTIVE DATE: December 1, 2013

TECHNICAL CONSIDERATIONS:

None

FISCAL IMPACT SUMMARY:

This bill may have a fiscal impact. However, the Fiscal Research Division cannot estimate the cost of this bill because we cannot estimate how many people may be charged with this crime. The following costs may be incurred for every one person charged and convicted of this crime:

- Administrative Office of the Courts: \$501 per disposition
- Indigent Defense Services: \$235 in district court
\$446 in superior court without a trial
\$1,180 in superior court with a trial
- Community Corrections: \$3.63 per day of suspension for a minimum of nine months

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

This bill creates a new Class H felony by adding subsection (a1) to G.S. 14-54, Breaking or entering buildings generally. G.S. 14-54(a1) provides that it shall be a Class H felony for any person to break or

enter any building with intent to terrorize or injure an occupant of the building. This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

ASSUMPTIONS AND METHODOLOGY:

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), made changes to North Carolina's court system, corrections system (both to prisons and probation), and to post-release supervision. The Act also created a statewide confinement program for housing misdemeanants with sentences of less than 180 days in county jails. Previously, county jails were only required to house misdemeanants with sentences of 90 days or less. In addition, all F-I felons are now subject to nine months of post-release supervision (PRS). B1-E felony PRS has been increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that may be needed as a result of revocations

Based on FY 2011-12 data and changes under the JRA, it is estimated that 35% of Class H convictions will result in active sentences with an average estimated time served of 10 months. If, for example, there were three Class H convictions for this proposed offense per year, active sentences would result in the need for one additional prison bed the first year and one additional prison bed the second year. Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of probation revocations or the imposition of confinement in response to violation (CRV). In addition, since nine months of PRS follows release from prison for offenders convicted of Class H felonies, there will be some impact on PRS caseloads and prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

Some of the conduct prohibited by G.S. 14-54(a1) may also be covered under G.S. 14-221, Breaking or entering jails with intent to injure prisoners. This offense is a Class F felony. The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 14-221. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

Judicial Branch

The Administrative Office of the Courts (AOC) provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

In calendar year 2012, approximately 612 defendants were charged with the Class H felony of violating G.S. 14-54(a), breaking or entering any building with intent to commit a felony or larceny, and 386 defendants charged with the Class 1 misdemeanor of violating G.S. 14-54(b), wrongfully breaking or entering any building. AOC does not have data on the specifics of these incidents to determine how many cases included intent to terrorize or injure an occupant and thus may be prosecuted under proposed G.S. 14-54(a1). AOC is not able to estimate the frequency of this new offense. It is also possible that some of these

defendants may currently be charged under G.S. 14-10.1 (terrorism), however, this is a new offense and AOC does not currently have an offense code for this statute. The Class H felonies in this bill will represent new charges in superior court, and district court backlogs and personnel shortages would prevent any offsetting reduction in district court resources for the offenses increased. The cost per disposition for a Class H felony is \$501. AOC states that any increase in workload could not be absorbed by existing staff, and that any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. IDS estimates that the cost of a new Class H felony will result in an increase of \$235 per case for a private appointed counsel (PAC) attorney in district court. In superior court, IDS estimates that the cost of a PAC attorney per case for a Class H offense would be \$446 if the case does not go to trial and \$1,180 if it does.

Department of Public Safety –Prison Section

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,¹ and represent the total number of beds in operation, or authorized for construction or operation as of December 2012.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three). As shown, the Sentencing Commission cannot provide an estimate of the number of inmates added to the prison system by the end of FY 2014-15 from this specific legislation.

Population Projections and Bed Capacity Five Year Impact					
	June 30 2013	June 30 2014	June 30 2015	June 30 2016	June 30 2017
1. Inmates ²	38,999	39,062	39,091	39,047	39,135
2. Prison Beds (Expanded Capacity)	40,926	40,926	40,926	40,926	40,926
3. Beds Over/(Under) Inmate Population	(1,927)	(1,864)	(1,835)	(1,879)	(1,791)
4. Additional Inmates Due to this Bill³	<i>No estimate available</i>				
5. Additional Beds Required	<i>No estimate available</i>				

¹ Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

² The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in February 2012.

³ Criminal penalty bills effective December 1, 2013, should not affect prison population and bed needs until FY 2014-15 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

Department of Public Safety – Community Correction Section

For felony offense classes E through I and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

Offenders given intermediate or community sanctions requiring supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service.⁴ General supervision of intermediate and community offenders by a probation officer costs \$3.63 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

In FY 2011-12, 39% of Class H offenders received active sentences; 45% received intermediate sentences; and 16% received community punishments. All active sentences will result in nine months of post-release supervision (PRS). The average lengths of intermediate and community punishment imposed for this offense class were 30 and 27 months, respectively. Therefore, at a minimum, one conviction resulting from this bill will require at least nine months of PRS. The cost of nine months of PRS is \$980 per offender (\$3.63 per day times 270 days).⁵

SOURCES OF DATA: Department of Public Safety; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; and Office of Indigent Defense Services.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: William Childs

APPROVED BY:

Mark Trogdon, Director
Fiscal Research Division

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⁴ DCC incurs costs of \$1.29 per day for each offender sentenced to the Community Service Work Program.

⁵ Due to the effective date of December 1, 2012, and the typical lag time between charge and conviction (6 months), little impact is assumed for DCC in FY 2012-13. Though some offenders may come under DCC supervision during this time, this note assumes an even entry over the course of FY 2013-14.